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ISB #1923

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

HOLM CONSTRUCTION, LLC, an Idaho )  
Limited Liability Company, in the name of )  
THE UNITED STATES OF AMERICA, )

Plaintiff, )

vs )

DESERT SAGE CONTRACTORS, Inc., an )  
Idaho Corporation, and DEVELOPERS )  
SURETY AND INDEMNITY COMPANY, )  
Surety, )

Defendants, )  
\_\_\_\_\_ )

Case No. **CIV 03-273-E-LMB**  
**COMPLAINT**

COMES NOW the Plaintiff, HOLM CONSTRUCTION, LLC, an Idaho Limited Liability Company, in the name of the United States of America, (hereinafter referred to as "Holm") and for cause of action against the Defendant, Desert Sage Contractors, Inc., an Idaho Corporation, (hereinafter referred to as "Desert Sage") and Developers Surety and Indemnity Company, (hereinafter referred to as "DSIC") alleges as follows:



I.

That Plaintiff, Holm, is a corporation organized and existing under the laws of the State of Idaho, with its principal office and place of business located in Bannock County, Chubbuck, Idaho. Holm is engaged in the business of construction practices including masonry work, carpentry work, and etc.

II.

That Defendant, Desert Sage, is a corporation organized and existing under the laws of the State of Idaho, with its principal office and place of business located in Bonneville County, Idaho Falls, Idaho.

III.

That Defendant, DSIC, is a corporation duly authorized to engage in the business of executing surety bonds in the State of Idaho, with its principal place of business located at Orange County, Irving, California.

IV.

That this action arises and the court has jurisdiction under the Miller Act, United States Code, Title 40, Sections 270 *et al.*

V.

On April 2, 2002, Defendant, Desert Sage, entered into a legal contract, in writing, with the United States of America to furnish the materials and perform the labor for the construction of a Cress Creek Parks and Trail, in accordance with the specifications contained in the contract for consideration of \$297,335.60. The contract was designated Cress Creek Parks and Trail, Contract No. NDC020081.



## **VI.**

On April 16, 2003, pursuant to the terms of the contract, Defendant, Desert Sage, as principal, and Defendant, DSIC, as surety, executed and delivered to the United States their bond in the amount of \$294,935.60, conditioned as required by the Miller Act, for the protection of all persons supplying labor and materials in the prosecution of the work provided for in the contract. A copy of that payment bond is attached hereto as Exhibit "A" and incorporated herein by this reference.

## **VII.**

On or about May 10, 2002, Holm entered into a contract with Desert Sage, whereby Holm agreed to furnish certain labor and materials required for the construction project on the Cress Creek Trail and parking lot under Contract No. NDC020081, between Desert Sage and the United States of America. A copy of this contract is attached hereto as Exhibit "B" and incorporated herein by this reference.

## **VIII.**

Holm then entered into the performance of its subcontract and furnished labor and materials as prescribed therein, and performed additional and extra labor in the prosecution of the work provided for in the contract between Desert Sage and the United States of America. Holm therefore provided to the United States of America under the subcontract the reasonable value of labor and materials in amount of \$42,540.00. Desert Sage has paid \$20,000.00 of such amount, leaving a balance due of \$22,540.00, plus interest.



**IX.**

Notwithstanding Holm several demands for payment, such balances have not been paid, there is now justly due and owing to Holm the sum of \$22,540.00 and interest at the legal rate from August 13, 2002, the same being the reasonable value of the labor performed and the materials furnished by Holm to the United States of America, which is less those amounts hereto before paid to Holm as set forth above.

**X.**

Desert Sage breached its contract with Holm in that it failed and refused to pay Holm the moneys due it for labor performed and material furnished as set forth above, and Holm was then forced to terminate its performance of the contract.

**XI.**

The date on which the last labor was performed and material supplied to Desert Sage by Holm was on or about August 13, 2002. A period of more than 90 days has elapsed since such date, and Holm has not been paid in full for the labor performed and material furnished.

**XII.**

All conditions precedent for the bringing and maintenance of this action have been performed or have occurred.

**XIII.**

That the Defendants, DSIC, owe to the Holm the sum of \$22,540.00, plus interest at the legal rate from August 13, 2002 until the date of Judgment because Defendants, DSIC, are sureties named for the payment bond contract under the project



named above.

**XIV.**


That Holm has been forced to hire the services of an attorney due to Defendants' failure to perform under said contract and so should be awarded their attorney's fees and costs in the amount of \$10,000.00, or such reasonable amount as may be determined by the court.

WHEREFORE, the Plaintiff prays for Judgment against Defendants, Desert Sage and DSIC, both jointly and severally be held liable, as follows:

1. For the sum of \$22,540.00, together with interest and carrying charges as allowed by law from August 13, 2002.
2. For reasonable attorney's fees in the sum of \$10,000.00, if uncontested, or reasonable sum if contested.
3. For costs of court incurred herein.
4. For such other and further relief as the Court deems just.

Dated this 25 day of June, 2003.

BLASER, SORENSEN & HANSEN, Chrt.

By:   
STEPHEN J. BLASER  
Attorney for Plaintiff



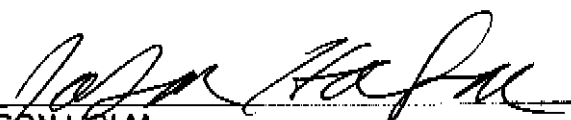
## VERIFICATION

STATE OF IDAHO            )  
                                  ): ss  
County of Bingham        )

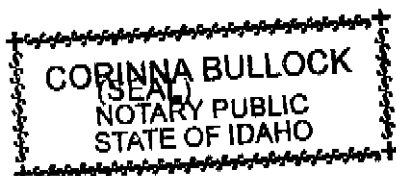
JASON HOLM, being first duly sworn on oath, deposes and says:


That I am the agent of the Plaintiff in the above-entitled matter; that I have read the foregoing COMPLAINT, know the contents thereof, and believe the same to be true and correct to the best of my knowledge.

DATED AND SIGNED this 6-19 day of June, 2003.

  
JASON HOLM

SUBSCRIBED AND SWORN to before me this 19<sup>th</sup> day of June, 2003.



  
NOTARY PUBLIC FOR IDAHO  
Residing at: Pocatello,  
My commission expires: 6-15-2005



**PAYMENT BOND**  
(See instructions on reverse)  
Bond# 849514P

DATE BOND EXECUTED (Must be same or later than date of contract)

April 16, 2002

OMB No.: 9000-0045

Public reporting burden for this collection of information is estimate to average 25 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

PRINCIPAL (Legal name and business address)

Desert Sage Contractors, Inc.  
445 North Capital, #5C  
Idaho Falls, ID. 83402

TYPE OF ORGANIZATION ("X" one)

☐ INDIVIDUAL ☐ PARTNERSHIP  
☐ JOINT VENTURE ☒ CORPORATION

STATE OF INCORPORATION

Idaho

SURETY(IES) (Name(s) and business address(es))

Developers Surety and Indemnity Company  
Five Centerpointe, Ste. 530  
Lake Oswego, OR. 97035

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS
*****	294	935	60

CONTRACT DATE

4-12-2002

CONTRACT NO.

NDC020081

**OBLIGATION:**

We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.

**CONDITIONS:**

The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.

**WITNESS:**

The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.

**PRINCIPAL**

SIGNATURE(S)	1. Desert Sage Contractors, Inc.	2.	3.	Corporate Seal
	<i>Wm. F. Rance Bare</i>	(Seal)	(Seal)	
NAME(S) & TITLE(S) (Typed)	1. Wm.F. Rance Bare President	2.	3.	

**INDIVIDUAL SURETY(IES)**

SIGNATURE(S)	1.	2.	(Seal)
	(Seal)	(Seal)	
NAME(S) (Typed)	1.	2.	

**CORPORATE SURETY(IES)**

SURETY A	NAME & ADDRESS	Developers Surety and Indemnity Company Five Centerpointe, Ste. 530 Lake Oswego, OR. 97035	STATE OF INC.	IA	LIABILITY LIMIT	\$	Corporate Seal
	SIGNATURE(S)	1. <i>Mary Rigel</i>	2.				
	NAME(S) & TITLE(S) (Typed)	1. Mary Rigel Attorney-In-Fact	2.				

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Previous edition is usable

STANDARD FORM 254 (REV. 10-98)  
Prescribed by GSA — FAR (48 CFR) 53.222(c)

**EXHIBIT A**



**CORPORATE SURETY(IES) (Continued)**

<b>SURETY B</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY C</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY D</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY E</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY F</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		
<b>SURETY G</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) (Typed)	1.	2.		

**INSTRUCTIONS**

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under the Act of August 24, 1935, 49 Stat. 793 (40 U.S.C. 270a-270e). Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the

spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a complete Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.



**POWER OF ATTORNEY FOR  
DEVELOPERS SURETY AND INDEMNITY COMPANY  
INDEMNITY COMPANY OF CALIFORNIA**

PO BOX 19725, IRVINE, CA 92623 • (949) 263-3300

KNOW ALL MEN BY THESE PRESENTS, that except as expressly limited, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, do each severally, but not jointly, hereby make, constitute and appoint:

**\*\*\*William F. Post, Terry S. Robb, Mary Rigel, jointly or severally\*\*\***

as the true and lawful Attorney(s)-in-Fact, to make, execute, deliver and acknowledge, for and on behalf of said corporations as sureties, bonds, undertakings and contracts of suretyship giving and granting unto said Attorney(s)-in-Fact full power and authority to do and to perform every act necessary, requisite or proper to be done in connection therewith as each of said corporations could do, but reserving to each of said corporations full power of substitution and revocation, and all of the acts of said Attorney(s)-in-Fact, pursuant to these presents, are hereby ratified and confirmed.


This Power of Attorney is granted and is signed by facsimile under and by authority of the following resolutions adopted by the respective Board of Directors of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, effective as of November 1, 2000:

RESOLVED, that the Chairman of the Board, the President and any Vice President of the corporation be, and that each of them hereby is, authorized to execute Powers of Attorney, qualifying the attorney(s) named in the Powers of Attorney to execute, on behalf of the corporations, bonds, undertakings and contracts of suretyship; and that the Secretary or any Assistant Secretary of the corporations be, and each of them hereby is, authorized to attest the execution of any such Power of Attorney;

RESOLVED, FURTHER, that the signatures of such officers may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures shall be valid and binding upon the corporation when so affixed and in the future with respect to any bond, undertaking or contract of suretyship to which it is attached.

IN WITNESS WHEREOF, DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA have severally caused these presents to be signed by their respective Executive Vice President and attested by their respective Secretary this 8<sup>th</sup> day of November, 2000.

By:   
David H. Rhodes, Executive Vice President

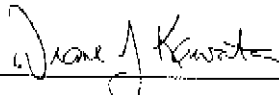
By:   
Walter A. Crowell, Secretary

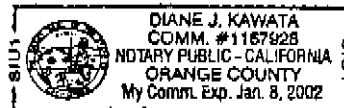


STATE OF CALIFORNIA                     )  
  )SS.  
COUNTY OF ORANGE                    )

On November 8, 2000, before me, Diane J. Kawata, personally appeared David H. Rhodes and Walter A. Crowell, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Signature 



**CERTIFICATE**

The undersigned, as Chief Operating Officer of DEVELOPERS SURETY AND INDEMNITY COMPANY and INDEMNITY COMPANY OF CALIFORNIA, does hereby certify that the foregoing Power of Attorney remains in full force and has not been revoked, and furthermore, that the provisions of the resolutions of the respective Boards of Directors of said corporations set forth in the Power of Attorney, are in force as of the date of this Certificate.

This Certificate is executed in the City of Irvine, California, the 20 day of March, 2002

By:   
David G. Lane, Chief Operating Officer



PO BOX 19725, IRVINE, CA 92623 • (949) 263-3300

\*\*\*William F. Post, Terry S. Robb, Mary Rigel, jointly or severally\*\*\*

ID: A380 (11/00)



## STATEMENT AND ACKNOWLEDGMENT

OMB No: 0000-0014  
Expires: 03/31/02

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## PART I - STATEMENT OF PRIME CONTRACTOR

9. PRIME CONTRACT NO.

NDB0020005

10. DATE SUBCONTRACT  
AWARDED

MAY, 10, 02

11. SUBCONTRACT NUMBER

CRESS 01

12. PRIME CONTRACTOR (Name, address and ZIP code)

DESERT SAGE CONTRACTORS, INC.  
445 N. CAPITAL AVE. SUITE 5C  
IDAHO FALLS, IDAHO 83402

13. SUBCONTRACTOR (Name, address and ZIP code)

HOLM CONSTRUCTION LLC  
19415 N. INKOM ROAD  
INKOM, IDAHO 83401

14. The prime contractor states that under the contract shown in item 1, a subcontract was awarded on the date shown in item 2  
(Name of Awardee)

to the subcontractor identified in item 3, for the following work:

CONCRETE FORMING, PLACEMENT, FINISHING AND CURING.

(CONCRETE AND FORMS FURNISHED BY DESERT SAGE)

15. PROJECT

CRESS CREEK TRAIL AND PARKING LOT

16. LOCATION

MARION CO. IDAHO

17. NAME AND TITLE OF PERSON SIGNING

Wm. F. Rance Barr, President

18. BY (Signature)

Wm. F. Rance Barr

19. DATE SIGNED

5/19/02

## PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

20. The subcontractor acknowledges that the following clauses of the contract shown in item 1 are included in this subcontract:

Contract Work Hours and Safety

Standards Act - Overtime

Compensation - Construction

Payroll and Basis Records

Withholding of Funds

Disputes Concerning Labor Standards

Davis-Bacon Act

Apprentices and Trainees

Compliance with Copeland Regulations

Subcontracts

Contract Termination/Debarment

Certification of Eligibility

21. NAMES OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

NONE

22. NAME AND TITLE OF PERSON SIGNING

JASON HOLM, President

23. BY (Signature)

JASON HOLM

24. DATE SIGNED

5-18-02

GSA FPMR (41 CFR) 101-11.6

STANDARD FORM 1413 (REV. 6-99)  
Prescribed by GSA - FPMR (41 CFR) 101-11.6EXHIBIT B